

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
(www.co.mo.md.us/council/board.html)

Case No. A-5808

PETITION OF LYNN W. BAILETS AND KATHERINE CROSSON

(Hearing held October 2, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, November 1, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Sections 59-C-1.326(a) and 59-C-1.326(b)(2). The petitioners propose to construct an accessory structure (greenhouse) that requires 23.60 foot variance as it is within 11.40 feet of the side street setback. The required setback is thirty-five (35) feet.

The subject property is Lot 47, Block 3, Chevy Chase View Subdivision, located at 9809 Gartrell Place, Kensington, Maryland, 20895, in the R-90 Zone (Tax Account No. 00998541).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct an 8 x 14 foot accessory structure/greenhouse in the southern side yard. The property is located at the intersection of Gartrell Place and Glenridge Street.
2. The petitioner testified that the property is unique because his house is sited closer to street than the other houses in the immediate neighborhood, resulting in a very shallow rear yard. The petitioner testified that the greenhouse, as proposed, would be screened by an existing brick fence. See, Exhibit Nos. 6(c), 6(d) and 6(f).
3. The petitioner testified that the proposed greenhouse could not be located in the rear yard because it would be seen from the neighboring properties and would not be in keeping with the esthetics of the neighborhood. The petitioner testified that a structure in the rear yard would eliminate the existing open, green space of the property.
4. The petitioner testified that he has spoken with his neighbors and that the neighbors support the variance request. The record contains a waiver for the

proposed structure from the Council of Chevy Chase View. See, Exhibit No. 7.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional topographical or other conditions peculiar to the property and that the lot is similar in size and shape to other lots in the neighborhood. See Exhibit No. 9 (zoning vicinity map).

The Board notes that the existing improvements to the property do not create a zoning reason for the grant of the requested variance. Uniqueness or peculiarities for purposes of the evaluation of a proposed variance do not refer to the extent of improvements upon the property. (Umerley v. People's Counsel, 108 Md. App. 497, 506 (1996) citing North v. St. Mary's County, 99 Md. App. 502, 514 (1994).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance of 23.60 feet from the required thirty-five (35) foot side street setback for the proposed construction of an accessory structure/greenhouse is denied.

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 1st day of November, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.